

EXHIBIT 7

<p style="text-align: right;">Volume: I Pages: 1 - 184 Exhibits: 1 - 13</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>*****</p> <p>MICHAEL WATSON, INDIVIDUALLY, AND AS FATHER AND NEXT FRIEND OF JOHN WATSON, PPA, Plaintiff,</p> <p style="text-align: center;">vs. CIVIL ACTION NO. 04-11782DPW</p> <p>ELECTROLUX PROFESSIONAL OUTDOOR PRODUCTS, INC., Defendant. *****</p> <p>DEPOSITION of LESLIE N. WILDER, taken on behalf of the Defendant, pursuant to the Federal Rules of Civil Procedure before Eileen Baker, Registered Professional Reporter and Notary Public within and for the Commonwealth of Massachusetts, at the offices of Sugarman, Rogers, Barshak & Cohen, P.C., 101 Merrimac Street, Boston, Massachusetts, on Monday, March 27, 2006, commencing at 10:26 a.m.</p> <p style="text-align: center;">SHEA COURT REPORTING SERVICES (617) 227-3097</p>	<p style="text-align: right;">I N D E X</p> <p>1</p> <p>2 WITNESS: DIRECT/ CROSS/ REDIRECT RECROSS</p> <p>3</p> <p>4 LESLIE N. WILDER</p> <p>5 By Mr. Barry 4</p> <p>6 By Mr. Tobin 177</p> <p>7</p> <p style="text-align: center;">E X H I B I T S</p> <p>8 NO. PAGE</p> <p>9 1 Report 9/29/05 5</p> <p>10 2 Profile 5</p> <p>11 3 CV 5</p> <p>12 4 Letter 3/24/06 75</p> <p>13 5 Handwritten Notes 112</p> <p>14 6 Handwritten Notes 113</p> <p>15 7 Handwritten Notes 113</p> <p>16 8 Handwritten Notes 113</p> <p>17 9 Handwritten Notes 113</p> <p>18 10 Handwritten Notes 113</p> <p>19 11 Letter 11/21/05 134</p> <p>20 12 Letter 3/16/06 134</p> <p>21 13 ANSI B7.5-1983 143</p> <p>22 VIDEO TESTIMONY PAGES 83-84</p> <p>23</p> <p>24</p> <p style="text-align: center;">SHEA COURT REPORTING SERVICES (617) 227-3097</p>
<p style="text-align: center;">APPEARANCES:</p> <p>FINNERAN, BYRNE & DRECHSLER, LLP (By Jonathan E. Tobin, Esq.) 50 Redfield Street Boston, Massachusetts 02122 On behalf of the Plaintiff</p> <p>SUGARMAN, ROGERS, BARSHAK & COHEN, P.C. (By David A. Barry, Esq. and Suleyken D. Walker, Esq.) 101 Merrimac Street Boston, Massachusetts 02114 On behalf of the Defendant</p> <p>Also Present Lennart Gustafsson George P. Libbares, Videographer</p> <p style="text-align: center;">SHEA COURT REPORTING SERVICES (617) 227-3097</p>	<p style="text-align: right;">P-R-O-C-E-E-D-I-N-G-S</p> <p>At the offices of Sugarman, Rogers, Barshak & Cohen, P.C., 101 Merrimac Street Boston, Massachusetts, on Monday, March 27, 2006, commencing at 10:26 a.m.</p> <p style="text-align: center;">STIPULATIONS</p> <p>It is hereby stipulated and agreed by and between counsel for the respective parties that the reading and signing will not be waived. The sealing and filing are waived.</p> <p>It is further stipulated and agreed that all objections, except objections to the form of the questions, and motions to strike will be reserved until the time of trial.</p> <p>LESLIE N. WILDER, being first duly sworn, was examined and testified as follows:</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>BY MR. BARRY:</p> <p>Q. Would you tell us your name, please, sir?</p> <p>A. I'm Leslie Wilder, L-E-S-L-I-E, W-I-L-D-E-R.</p> <p>Q. Where do you live, Mr. Wilder?</p> <p style="text-align: center;">SHEA COURT REPORTING SERVICES (617) 227-3097</p>

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- 1 Q. That is you don't know whether he was
2 climbing down from the ladder or whether he
3 was all the way down and on the ground?
4 A. I don't know that.
5 Q. Do you know where his hands were when he was
6 injured?
7 A. Precisely, no.
8 Q. Do you know what part of the saw, if any,
9 his left hand was on when he was injured?
10 A. My understanding his left hand was on the
11 rear handle.
12 Q. So, you believe that at the time of his
13 injury he had already made the switch by
14 putting his left hand which had been on the
15 front handle to the rear handle?
16 A. I believe so, yes.
17 Q. Do you know how long after he made that
18 switch from having his left hand on the
19 front handle to the rear handle he was
20 injured?
21 A. No.
22 Q. Have you performed any tests to determine
23 how the plaintiff's accident happened?
24 A. Yes.

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- 1 Q. What tests did you perform?
2 A. I did use a ladder and I did climb up on the
3 fifth step, I believe it was the fifth step,
4 and simulated going through the motions
5 without the saw running and timed myself
6 coming down and transferring hands, just as
7 he described it, to see how long I could get
8 that sequence of events. How long it would
9 take me to do that sequence of events.
10 Q. And what saw did you use in those tests?
11 A. The exemplar that I had which is a 12-inch
12 saw.
13 Q. When did you obtain that exemplar?
14 A. Early on. I don't remember precisely when,
15 but early on when I got involved in this
16 case.
17 Q. So, you had it before your September 2005
18 report?
19 A. Yes.
20 Q. When did you perform the test that you just
21 described?
22 A. I think I have it in my notes, but I don't
23 have them in front of me.
24 Q. Was it before your September 2005 report?

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- 1 A. Yes.
2 Q. I don't believe you mentioned it in your
3 report. Is there any reason why you don't?
4 A. I'd have to look at my report. I think I
5 did mention it, but I'm not sure.
6 Q. Maybe I'm mistaken. How much time elapsed
7 in your test?
8 A. I think approximately nine seconds.
9 Q. Was that test videotaped?
10 A. No, it wasn't.
11 Q. Did you repeat it several times?
12 A. Yes.
13 Q. Did you generally get nine seconds from the
14 time that you started to descend the ladder
15 to the time when you simulated his accident
16 happening?
17 A. I believe in my notes I actually have the --
18 I think it was at least three tests, and I
19 actually have the times down, but it was
20 plus or minus whatever that averaged out to
21 about nine seconds, I believe.
22 Q. Do you have your report there?
23 A. I do.
24 Q. Can you just point it to me because I ---

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- 1 A. I am looking for it and I don't see it
2 myself.
3 Q. Do you think you might have done that test
4 or those tests that you just described in
5 response to getting the defendant's expert
6 reports?
7 A. No.
8 Q. After they did those tests and those tests
9 were shared with you?
10 A. No. I did it before that and I'm fairly
11 certain that in my notes will have the date
12 that I actually did it.
13 Q. Okay.
14 A. No, I don't see it in my report which
15 surprises me, but I don't see it.
16 Q. Did you perform any other tests in
17 connection with your work on this case?
18 A. I performed the coastdown test, yes.
19 Q. What did you do in regard to that test?
20 A. I timed how long it took the blade to stop
21 from the release of the trigger.
22 Q. And that is in your report I believe,
23 correct?
24 A. I believe it is.

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- 1 Q. How long did it take for the blade to coast
2 down from the time the trigger was released?
3 A. The number in my mind says 12.7 seconds. I
4 may or may not have that correct.
5 Q. Have you performed any other tests besides
6 the ladder descending test and the coastdown
7 time test in connection with your work on
8 this case?
9 A. Yes.
10 Q. What other tests have you performed?
11 A. I did take a video of the startup time of
12 the saw, which was inconclusive. It's on
13 that CD that you noticed that I said that's
14 it probably not worth copying. It's just
15 two videos of the starting of the saw
16 lasting a couple of seconds each. And I
17 also manipulated the saw after seeing these
18 videos to see whether I could accidentally
19 or inadvertently trigger the interlock and
20 the trigger. I could, yes.
21 Q. Have you now told us about all of the tests
22 that you've done in connection with your
23 work on the Watson case?
24 A. I also handled the saw quite a bit, but --

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- 1 starting and stopping it, but I can't recall
2 any other test that I did specifically.
3 Q. Did you cut anything with the exemplar saw
4 for purposes of this case?
5 A. Yes.
6 Q. What did you cut?
7 A. I just jammed the saw into the wood as --
8 into a piece of wood as it was coasting to a
9 stop a few times, just to see what would
10 result, and it wasn't -- it wasn't
11 documented to the extent that I listed what
12 the coast times were, because it was not
13 completely comparable to the accident. I
14 just wanted to see what the effect of this
15 abrasive blade in a coastdown mode would
16 have had on a piece of wood.
17 Q. When did you do that test?
18 A. I did it early on before my report, and I
19 again did it after any report.
20 Q. Did you keep notes of either of those two
21 tests?
22 A. No. It was just visually myself to see
23 whether the saw would stop without cutting
24 away any of the wood, and it did cut the

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- 1 wood.
2 Q. Did you reach any conclusions from those two
3 tests?
4 A. A saw blade is hazardous.
5 Q. Is that something you didn't know before you
6 did the test?
7 A. No, I did know that, but I did want to see
8 what it looked like and felt like.
9 Q. Did you learn anything new from doing the
10 test?
11 A. No.
12 Q. The startup time test, when did you do that?
13 A. Within the last two or three weeks, just in
14 preparation for the deposition I was
15 thinking about it.
16 Q. What did you do when you did the startup
17 time test?
18 A. I videotaped the starting of the saw and
19 tried to see how long it would take before
20 it came up to speed, but my camera would not
21 -- I could not distinguish after the first
22 tenth or so of a second what speed the saw
23 had reached, and it just indicated to me
24 that the saw came up to speed very quickly

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- 1 and in all likelihood it reached its final
2 speed in probably less than three tenths of
3 a second or something like that.
4 Q. Why did you do that test?
5 A. Because I anticipated being questioned about
6 some lurch or jerkiness if a blade brake was
7 installed on the saw, and I wanted to make
8 sure that the saw didn't take -- although I
9 knew it didn't, I just wanted to reassure
10 myself that it didn't take more than two or
11 three seconds to start up and reach full
12 speed.
13 Q. Did you reach any conclusion about how long
14 it took for the blade to reach full speed?
15 A. Yes. Without being sure of it, it seemed to
16 me clearly less than one second.
17 Q. How does the startup time relate, if it does
18 relate, to the issue of a blade brake?
19 A. Well, the startup is apparently acceptable
20 in terms of operators being able to handle
21 the saw and not having it lurch
22 uncontrollably when they start, and
23 therefore, if the blade were to be braked in
24 the same or longer time period, then that

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1 A. I don't know.
 2 Q. And Dewalt I think you point out has a
 3 portable circular saw with a blade brake?
 4 A. Yes.
 5 Q. Do you know whether Dewalt advertises its
 6 blade brake as a safety device?
 7 A. I have not exhaustively looked into the
 8 advertising to see whether or not they
 9 advertise it, but it's common in the
 10 industry and you can see it in many of the
 11 groups on the web, where users will say I
 12 will not operate or buy a saw without a
 13 blade brake for safety reasons.
 14 I will add to that statement that
 15 although I don't know about the advertising,
 16 I do know that in some of the operator's
 17 manuals on these saws it's clearly indicated
 18 that if the brake is not functional that the
 19 saw should be repaired, because it can be
 20 hazardous.
 21 Q. Have you ever performed any tests to
 22 determine how fast the abrasive blade that
 23 was on Mr. Watson's saw would need to be
 24 traveling in order to produce the injury

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1 that he sustained?
 2 A. I don't know that that could be done,
 3 because it would be a function of both how
 4 fast it's traveling and how much force it
 5 impacts the body with.
 6 Q. Is the answer to my question no, that you
 7 haven't performed such tests?
 8 A. I have not performed those tests, to answer
 9 the specific question you asked.
 10 Q. Do you know, speaking of force, whether
 11 there was any force applied to the saw just
 12 before it contacted, just before the blade
 13 contacted Mr. Watson's leg?
 14 A. Other than inertia loading of the ---
 15 MR. TOBIN: Just note my objection.
 16 You can answer if you understand the
 17 question. Force of blade of the saw.
 18 Q. For example -- let me clarify my question --
 19 did the saw swing into Mr. Watson's leg?
 20 Was the saw with the spinning blade dropped
 21 onto his leg, in which case the force I
 22 think would be gravity that would be applied
 23 to the saw. Did somebody shove the saw into
 24 his leg? That's what I mean.

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1 Do you know or do you have an
 2 opinion as to whether any force from any
 3 source was applied to the saw immediately
 4 before it contacted his leg?
 5 A. I don't know that.
 6 Q. And you certainly don't know the degree of
 7 force, if any, that was on the saw when the
 8 blade contacted his leg, correct?
 9 A. That's correct.
 10 Q. You didn't conduct any tests to determine
 11 that?
 12 A. No.
 13 Q. And you didn't do any test to determine how
 14 much energy had to be in an abrasive blade
 15 at the time of Mr. Watson's injury in order
 16 to produce the injury, correct?
 17 A. The reason I didn't do those tests -- and I
 18 did not do those tests -- is because the
 19 variables are too great. Exactly where it
 20 struck his leg, exactly what the contraction
 21 of his muscles might or might not have been
 22 would have affected how deeply the saw could
 23 penetrate. I don't know whether it struck
 24 some bone in his leg and then veered off or

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1 whether it hit a particularly vulnerable
 2 spot behind the knee.
 3 And everyone's body is going to be
 4 different, and the degree of muscle tension
 5 would be different. The angle at which the
 6 saw would have hit the body could be
 7 different.
 8 The variables are just so great
 9 that I don't think it would be possible to
 10 do that kind of a test, but I was convinced
 11 that in the coastdown process this saw, if
 12 it impacted his body with any degree of
 13 force, could certainly have done the damage
 14 it did, and the result is the saw did do the
 15 damage.
 16 Q. Did you reach an opinion that there was a
 17 coastdown time that would be too long to
 18 cause his injury? Do you understand my
 19 question?
 20 A. I do understand your question and -- I think
 21 I understand it.
 22 Q. Well, I'm going to give you an example. If
 23 you say the coast downtime is approximately
 24 12 seconds, in other words, the time between

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- 1 Q. That was not something that you had thought
2 about before your September 2005 report?
- 3 A. That's correct, or if I thought about it, it
4 is unconscious, because there was an
5 interlock there and I played with it and it
6 just looked to me as if it was a reasonable
7 interlock, but --
- 8 Q. Go ahead.
- 9 A. -- I didn't anticipate that it could be
10 inadvertently actuated.
- 11 Q. You have an exemplar saw here, correct?
- 12 A. Yes.
- 13 Q. And the interlock is functional on this saw?
- 14 A. Yes.
- 15 Q. Can you demonstrate using the exemplar saw
16 how Mr. Watson possibly inadvertently turned
17 it on?
- 18 A. I can try.

19 MR. BARRY: This is where the video
20 operator has a role here. Can we take a
21 short break?

22 (Brief recess.)

23 Q. I think you indicated, Mr. Wilder, before
24 the break that you said it was possible that

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- 1 the saw was under power shortly before the
2 accident, correct?
- 3 A. Well, you asked me whether or not I knew to
4 a reasonable degree of engineering certainty
5 whether the saw was powered or whether it
6 was coasting down, and in each case I
7 answered I can't, but I can say with a
8 reasonable degree of engineering certainty
9 that it was some combination of the above.
10 It could have been coasting. It could have
11 been powered or it could have been coasting
12 down and powered while coasting down or
13 after it had completed coasting down.
- 14 I can tell you that that happened,
15 because the accident occurred, but I can't
16 tell you which or in what proportion these
17 possibilities exist.
- 18 Q. And one of the possibilities is that the saw
19 was fully under power at the time of the
20 accident?
- 21 A. Yes.
- 22 Q. I think you also said that when you first
23 wrote your report that you were aware that
24 there's a trigger lock on the saw, correct?

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- 1 A. I was aware of the trigger lock.
- 2 Q. And it seemed to be working fine on your
3 exemplar saw?
- 4 A. It simply didn't occur to me that it could
5 be inadvertently actuated.
- 6 Q. So, would you now demonstrate how you
7 believe, if you do believe, that the saw can
8 be inadvertently activated?
- 9 A. I can certainly try.
- 10 THE VIDEOGRAPHER: Well, if you
11 could put your mike up, please, just in
12 case.
- 13 THE WITNESS: Say that again,
14 please.
- 15 THE VIDEOGRAPHER: You have the
16 mike here.
- 17 THE WITNESS: Right, right, right.
- 18 MR. TOBIN: Let's go off the record
19 for a second.
- 20 (Discussion off the record.)
- 21 THE VIDEOGRAPHER: The time is
22 12:44 p.m. We are now on the video record.
- 23 Q. Let me ask you now to demonstrate while we
24 are on the video record how you believe, if

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- 1 you do believe, that Mr. Watson might have
2 inadvertently activated the saw.
- 3 MR. TOBIN: Note my objection to
4 the questioning. Go ahead.
- 5 THE WITNESS: Are we ready?
- 6 THE VIDEOGRAPHER: Yes.
- 7 A. (Witness demonstrated.)
- 8 Q. Now, what are you using as you do that to
9 depress the trigger lock, Mr. Wilder?
- 10 A. My forefinger.
- 11 Q. Your forefinger of your left hand, just so
12 the record is clear?
- 13 A. Yes.
- 14 Q. Could you demonstrate it again, please?
- 15 A. (Witness demonstrated.)
- 16 Q. Go ahead.
- 17 A. (Witness demonstrated.)
- 18 Q. Are you making an effort to push in on the
19 trigger lock when you do that or is that ---
- 20 A. I'm doing that for the demonstration
21 purposes. Transfer. I'm driving it down
22 and grabbing it and it's depressed.
- 23 Q. Okay. Thank you.

24 THE VIDEOGRAPHER: The time is
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1 12:45. We're off the video record.
2 (Discussion off the record.)
3 (Luncheon recess.)
4 MR. BARRY: We did receive on
5 Friday early afternoon I think it was what
6 has been marked as Exhibit 4, which is
7 Mr. Wilder's March 24th, 2006 letter to you
8 addressing a different possible accident
9 scenario and also a different potential
10 alleged defect having to do with the
11 interlock.

12 I take the position and will take
13 the position with the court that that
14 disclosure did not comply with the relevant
15 rules. We don't have to argue about that
16 now. That's a legal matter, but I just want
17 it clear on the record that the fact that I
18 am now put in a position where I have to ask
19 Mr. Wilder about this, and have done so and
20 will continue to do so, doesn't mean that
21 the defendant is waiving its right to object
22 obviously to the late disclosure of this new
23 opinion. That's my speech on the record and
24 we'll obviously address that with the court.

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(Reporter read back.)

2 Q. When you demonstrated just before the break,
3 Mr. Wilder, how it might be possible to
4 inadvertently activate the saw, can you tell
5 me in words what you were doing? I
6 understand it was videoed, but how did you
7 accomplish that demonstration, if you could
8 describe that now in words?

9 A. Well, basically -- let me preface it by
10 saying it's not the only way in which I
11 think the interlock could be inadvertently
12 depressed, but it is -- what I did is
13 transfer the saw from the weight being
14 carried by my left hand as the plaintiff was
15 presumably going down the ladder and
16 momentarily took the weight off the left
17 hand by using my right hand on the forward
18 handle, and then grabbing the saw with my
19 left hand at the handle, at the rear handle
20 while letting go with my right hand.

21 And in doing so, what I was showing
22 is that it was possible for the weight as it
23 went from my right hand to my left hand to
24 be supported partially by the side of my

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1 forefinger up against the interlock. And
2 you asked me whether I deliberately did it
3 or -- well, obviously the demonstration was
4 to show that it could be done, and so I
5 showed that it could be done.

6 I saw on the video that the Swedish
7 gentleman, he had the saw -- he did
8 something similar, except he kind of tossed
9 the saw from his right hand to his left hand
10 and kind of caught it, so that the weight of
11 the saw was then applied in a downward
12 position to his left hand showing that it
13 could be inadvertently actuated that way.

14 And he also triggered it several
15 times with the saw held down at his side
16 with just one hand, which is another way
17 which it could be inadvertently triggered,
18 and I'm just saying it is possible to
19 inadvertently trigger the interlock.

20 And because of the weight of the
21 saw you have quite a firm grip on that
22 handle and with the grip and especially if
23 you're wearing gloves, because I did try it
24 with heavy gloves as well -- not here -- it

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1 becomes much easier to hit that interlock
2 because the gloves take up more space within
3 the handle.

4 Q. When you demonstrated how it was possible to
5 inadvertently start the saw here before the
6 video camera was one of your fingers
7 exerting a force in one direction on the
8 trigger lock and another finger or part of
9 your hand exerting a force in an opposite
10 direction on the trigger?

11 A. Well, the two are not in opposition. If
12 anything, I'd say one is more at right
13 angles to the other. The interlock moves
14 fore and aft and the trigger essentially
15 moves at right angles to it, even though
16 it's on an arc.

17 What really happens is that your
18 hand is now preparing to carry the weight of
19 the saw and in carrying the weight of the
20 saw there is an opening in the handle that
21 your hand comes into and supports the weight
22 of the saw. And if you were to hold the saw
23 completely horizontal and just grasp it that
24 way, then you probably would not hit the

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1 interlock. If you hold it completely
2 vertical it's almost certain the interlock
3 would be depressed, and somewhere in the
4 middle then starts the dynamics of how your
5 hand reaches into the handle and when you
6 grasp it, exactly which way the force is
7 applied.

8 The trigger and the plunger are
9 very close together. So, getting one finger
10 up against both of them, if that's what I
11 did -- it's hard to say because the
12 forefinger and the next middle finger both
13 can grip the trigger. I don't believe I
14 used my middle finger to actuate it at that
15 point, but it was unconscious.

16 Q. But it was your forefinger that was
17 actuating the trigger lock?

18 A. Yes.

19 Q. And what part of your hand or what finger
20 was actuating the trigger?

21 A. I think it was my forefinger as well as my
22 middle finger, but I can't be sure how much
23 force was on each, because both of them will
24 straddle, can straddle the trigger.

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1 Q. When you said if you're holding the saw
2 vertical it's almost certainly to
3 inadvertently activate the saw?

4 A. If you're holding the saw with the blade up.

5 Q. That exactly was going to be my question.

6 A. Yes. If in the transfer of the saw it winds
7 up being held vertically at one point, then
8 the weight of the saw is resting on the hand
9 that's in the rear handle and the weight
10 will cause the plunger to depress.

11 Q. But Mr. Watson wouldn't have been holding
12 the blade up, would he?

13 A. I don't know how he transferred it. He may
14 have, and again in the videos here I can't
15 remember which gentleman -- some people
16 transferred it one way. There were several
17 people transferring it. Some kind of
18 flipped it -- I think there was a young man
19 in probably one of Dr. Funk's, if I
20 recollect correctly, demonstrations, he was
21 kind of -- when he grabbed the saw in his
22 left hand, he actually kind of tossed it up
23 in the air a little bit and flipped his hand
24 around.

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1 So, there is any number of ways in
2 which somebody could have transferred or
3 moved or supported the saw, and I can't be
4 sure how, except to show that with the two
5 items right in close proximity and in
6 proximity to where your hand would actually
7 grasp the saw to carry it, you can actuate
8 it. And it's designed that way, so that you
9 don't need to move too far away from where
10 you are to actuate it. That doesn't make
11 sense.

12 Q. No, no, no. It makes sense to me. Do you
13 have any information one way or another as
14 to whether the trigger lock was operative
15 and functioning as it was intended to
16 function on the day of Mr. Watson's
17 accident?

18 A. Only by presuming that if it wasn't, that
19 might have come out in some way, but I have
20 no knowledge.

21 Q. One way or another?

22 A. One way or another.

23 Q. Have you heard of a practice in the
24 construction industry of defeating the

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1 trigger lock, some workers defeating the
2 trigger lock by taping it in the depressed
3 position, so that it is not necessary each
4 time one wants to activate the saw to press
5 on the trigger lock, or either taping it or
6 just defeating it, removing it? Have you
7 heard of that, such a practice?

8 A. Well, I can tell you that I've heard of that
9 sort of practice in connection with other
10 safety devices on other machines. I don't
11 know of any specific practice with respect
12 to this saw, and in looking at the saw, I'd
13 say it would be probably difficult to do.

14 Q. To tape it?

15 A. To tape it so that it will stay depressed.
16 I'm not saying -- it's not impossible. It's
17 just looking at it, one would have to wrap
18 tape around this way, and eventually I think
19 the tape would stretch or peel off and the
20 trigger lock would -- I don't know whether
21 it's done or not. I'm not aware of any
22 practice. I can say that some people in
23 some instances have been known to defeat
24 safety devices.

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1 MR. TOBIN: Note my objection. You
2 can answer if you understand the question.
3 A. I'm not sure I can understand the question.
4 I can try to answer it without perhaps fully
5 understanding it, but ---

6 Q. I don't want you to do that.

7 MR. TOBIN: I don't want you to do
8 that. Let's just go off the record for a
9 second.

10 (Discussion off the record.)

11 Q. You'd never designed a power cutter at all,
12 correct?

13 A. That's right.

14 Q. And you certainly haven't designed a blade
15 brake for a power cutter, correct?

16 A. That's correct.

17 Q. You never prepared any design drawings or
18 prepared a prototype model of a power cutter
19 with a blade brake, true?

20 A. That's correct.

21 Q. And you never tested a power cutter with a
22 blade brake either, correct?

23 A. That's correct.

24 Q. You never had any formal training with

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1 respect to designing or manufacturing blade
2 brakes for power cutters, true?

3 A. I have had formal training in engineering
4 which would be applied to such a design. I
5 have that training, yes.

6 Q. If this power cutter had had a blade brake
7 on it, do you have any basis for knowing how
8 long the blade brake would have taken to
9 stop the blade?

10 A. I have some basis for that, yes.

11 Q. What basis do you have for that?

12 A. Well, first of all, I preface it by saying
13 without the design in place and without
14 knowing what the design goals were, I think
15 the design goals could be met to whatever
16 degree desired.

17 What I'm saying is if someone said
18 to me this blade brake must have stopped the
19 saw within one second or two seconds or six
20 seconds, I have the feeling that it
21 certainly could be implemented, but in
22 general, yes, what I did was is I went out
23 and looked at other saws of similar power,
24 did some rough, I won't say back of the

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1 envelope calculations, but I have done some
2 calculations, and I came to the conclusion
3 that if they had blade brakes similar to
4 what's on the market now that the blade
5 could have stopped in approximately two
6 seconds.

7 Now, I have no doubt that it could
8 have been improved or degraded depending
9 upon what the goals were.

10 Q. And you're basing that, just so I
11 understand, on the stopping power of blade
12 brakes that are on other types of saws,
13 including portable circular saws and mitre
14 saws?

15 A. Primarily the mitre saw, because I think the
16 wattage of the motor was similar and the
17 blade size was similar, and all I did was
18 took effectively the stopping ability of, I
19 think it was the Dewalt specifically, and
20 applied that with some modifications and
21 adjustments for the weight of the abrasive
22 blades, and in my report I said something
23 about the Partner's abrasive blade.

24 I don't know precisely what brand

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1 was used, but I did look up the weight of
2 the 12- to 14-inch abrasive blade based on
3 the exemplar that I have, did those
4 calculations and came up with the numbers
5 that indicated that seemed to me perfectly
6 reasonable to stop the blade within two
7 seconds.

8 Q. Again, that is based on the stopping time of
9 you said the Dewalt mitre saw?

10 A. The Dewalt and I think Ridgid was in the
11 same ballpark. Ridgid is another
12 manufacturer.

13 Q. You said you did some calculations there?

14 A. Yes.

15 Q. Are they in your notes?

16 A. Yes. It would have been in handwriting.

17 Q. Are these the notes? (Indicating)

18 A. No.

19 Q. Maybe you can pull them out.

20 (Brief recess.)

21 (Documents handed to counsel.)

22 MR. BARRY: If we could have the
23 court reporter mark these separately.

24 (Exhibit No. 5 Handwritten Notes

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1 marked for identification.)

2 (Exhibit No. 6 Handwritten Notes

3 marked for identification.)

4 (Exhibit No. 7 Handwritten Notes

5 marked for identification.)

6 (Exhibit No. 8 Handwritten Notes

7 marked for identification.)

8 (Exhibit No. 9 Handwritten Notes

9 marked for identification.)

10 (Exhibit No. 10 Handwritten Notes

11 marked for identification.)

12 Q. Would you identify the two pages of notes
13 that we've marked Exhibit 5 which we have
14 copied from your original file?

15 (Document handed to witness.)

16 A. Yes.

17 Q. What are they?

18 A. One of them is, has a line at the top that
19 says 9/26 Tobin Watson, the other page of
20 which is associated with it, has kind of a
21 picture of a rectangle with a small M in the
22 middle of it at the top of the page.

23 Q. When did you prepare those notes?

24 A. Approximately 9/26, September 26th, 2005.

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1 Q. Just before your report, your September 29th
2 report?

3 A. Yes. It may have been at the time that I
4 was writing the report. I'm not sure.

5 Q. I guess on the photocopy the date ---

6 A. There is no date on the one that has the
7 rectangle.

8 Q. But the 9/26 got cut off.

9 A. You're seeing the balance of it. You see
10 the 26th. It was September 26th.

11 Q. So, it's September 26th up in the upper
12 left-hand corner on the first page of
13 Exhibit 5?

14 A. Yes.

15 Q. What do those calculations represent?

16 A. They were just an attempt to estimate
17 whether or not the Partner or if a 12- or
18 14-inch blade on a Partner saw could have
19 been stopped in about the same time as the
20 Dewalt blade. Not the Dewalt blade, but the
21 Dewalt test that I did with two steel blades
22 stopped, which was just a little under two
23 seconds, and it was just a rough
24 confirmation that had the motor had the same

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1 kind of braking effect that the Dewalt motor
2 had, either a 12- or 14-inch blade would
3 have stopped in approximately two seconds or
4 could have been made to stop in about two
5 seconds also.

6 Q. Did you discuss your work to determine the
7 stopping time of a blade with a blade brake
8 on a Partner saw with any other engineer?

9 A. No.

10 Q. Maybe you can just tell me how you went
11 about figuring out based on the stopping
12 time of the blade in a mitre saw how you
13 felt, how quickly you felt the blade brake
14 in a power cutter would have stopped the
15 blade?

16 A. Yes. Let me try to do it by way giving an
17 analogy if I can. It may be easier to
18 describe. Picture a car that has a set of
19 wheels on it and a set of brakes on the
20 wheels and you step on the brakes and the
21 car will stop in 50 feet or 10 seconds or
22 whatever it is. And now, if you would like
23 to know given the same sort of technology
24 for brakes how long would a heavier car or a

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1 lighter car going at either somewhat faster
2 or slower speeds could be made to stop.

3 And that's essentially what I did.

4 Instead of it being a linear speed where a
5 body is moving in a straight line and you're
6 dragging it to a stop, this is a product
7 that is spinning, and that's an analogy.

8 What I did is I looked at the
9 Dewalt saw that had I believe a 12-inch
10 steel blade on it and I replaced the steel
11 blade with two -- I don't have my numbers
12 here, but I think with two 10-inch steel
13 blades. I bolted them on to the Dewalt saw
14 instead of the saw blade that was on there
15 originally, and I saw how fast it came to a
16 stop, and it was just under two seconds.

17 Q. That was slower than it would have stopped
18 with the single blade?

19 A. I think so, yes. Basically, I then said
20 that represents, given the Dewalt saw's
21 speed, that represents the braking power of
22 the motor. Now, let's apply that braking
23 power of the motor to a 12- or 14-inch
24 abrasive blade, instead of the two 10-inch

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1 blades.

2 So, at one point it's as if we
3 measured the car that stopped, the car that
4 weighed a thousand pounds and stopped in 50
5 feet. And now what we did is we changed the
6 car to a 2,000 pound car or a 1,500 pound
7 car going at a slightly different speed,
8 assuming that the brakes were as effective
9 or as ineffective as the first one was, and
10 I just ran the numbers and these are rough.
11 That's just to see whether it came out in
12 the same ballpark.

13 And what it turned out to be is
14 that if we put a 12- or 14-inch blade on
15 that Dewalt, which wasn't possible to do,
16 because physically it just didn't fit right,
17 and again the Dewalt saw also ran a
18 different speed, with a 14-inch blade it
19 would take 1.06 times, six percent longer
20 time to stop than what I tested the two
21 10-inch blades to be stopped at, which would
22 have meant two and a quarter seconds,
23 something like that.

24 And the same thing -- that was the

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1 14-inch blade and with the 12-inch blade it
2 would have stopped in about 1.1 seconds,
3 something like that. And the whole purpose
4 was not to do an exhaustive mathematical
5 analysis.

6 A lot of it was ballparking based
7 on some numbers that I got for weights of
8 the 14-inch abrasive saw, to show that given
9 the state of technology now, that the Dewalt
10 motor, which is about the same size, same 15
11 amperes, 120 volt motor, it could bring
12 these blades to a stop in approximately two
13 seconds. That's the whole purpose of it.

14 Q. As an engineer have you ever attempted to
15 answer the question why, if it's the case,
16 no manufacturer of power cutters uses a
17 blade brake on its saws?

18 A. I could make some, I won't say guesses, but
19 I can come up with some possible
20 explanations.

21 Q. What possible explanations do you think
22 there are?

23 A. One would be inertia in the industry. It
24 hasn't been done. Nobody is clamoring for

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1 it. It would cost money to redesign. It
2 would cost money to tool up for a new design
3 in all likelihood. In my view that's the
4 reason.

5 I have noticed with respect to
6 circular saws a few years back there were
7 very few that had brakes. Now it seems to
8 me nearly all of them have brakes, and my
9 guess would be if we were sitting here five
10 years from now that the power cutters will
11 all have brakes as well.

12 Q. Any other reasons that you can come up with?

13 A. No. They're going to cost a few dollars
14 more, but not significantly.

15 Q. Can you identify the document we've just
16 marked Exhibit 6?

17 (Document handed to witness.)

18 A. Yes.

19 Q. What's that?

20 A. Those are some notes I made primarily to
21 myself to talk about issues and questions
22 that I would have about Dr. Funk's testing.

23 Q. So, obviously these were done before you
24 were provided with Dr. Funk's report?

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1 A. No. They were done after.

2 Q. Excuse me, I misspoke. I'm thinking the
3 right thing.

4 A. Otherwise I would be very proud of myself.

5 Q. They were done after you were given his
6 report?

7 A. Yes.

8 Q. Were they done after you saw the videos?

9 A. No. I believe part of it might have been
10 after, part of it before. I think after the
11 videos would be.

12 Q. So, within the last two weeks?

13 A. Yes, but some of the thoughts that I have
14 down here were thoughts that I had had well
15 before I saw this report.

16 Q. Maybe you can just go through and read what
17 Exhibit 6 says and explain what you meant by
18 what you wrote there?

19 A. No. 1 says, "Used/rounded blade V for versus
20 square edge. New versus angle edge." I
21 don't know what the condition of the
22 abrasive blade was that Dr. Funk used, nor
23 do I know what the condition of the edge was
24 on the blade that Mr. Watson used, but it's

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1 Q. So, you got the videos sometime on or after
2 March 17th of 2006?
3 A. Yes.
4 Q. For the first time. And it wasn't until you
5 got them that you realized that you had some
6 supplemental or rebuttal report to provide?

7 MR. TOBIN: Note my objection.

8 A. Well, as I said in my note, I realized at
9 that point that there might have been an
10 inadvertent actuation of the interlock, and
11 I wanted to make sure that that was also
12 covered, because I don't know what happened.

13 Q. Now, in your original report marked
14 Exhibit 1 in your discussion of blade brakes
15 you talk about the cost of equipping the
16 Partner power cutter with a blade brake.

17 Did you reach any opinion, and if
18 so, I would like you to tell me the basis
19 for that opinion, as to how much more it
20 would cost to make the K2300 power cutter
21 with a blade brake?

22 A. I don't know that I can add to what I had in
23 my report, except to say that in previous
24 looks at this subject I came up with the

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1 conclusion that it would cost, at least for
2 the Makita, the retail cost difference
3 between the components -- Makita had a saw
4 that was available both with and without
5 blade brake, and so it was relatively
6 straight forward to look at their component
7 list and see what the differences were. And
8 on a retail basis I could have spent \$10
9 more to get the components that included the
10 braking in that saw and that was done a few
11 years ago.

12 Today I found that there are two
13 different Makita models, again with and
14 without blade brakes, and they retailed for
15 a difference of \$105 and \$127. So, the
16 retail difference is about \$22, and roughly
17 if you say three or four times or one-fourth
18 or one-third of that cost as being
19 manufacturing costs -- I don't know what
20 Partner's overheads are -- I would say we're
21 talking about again 6, 8, \$9 difference in
22 manufacturing cost at most.

23 Similarly, there is Dewalt that had
24 two saws that retailed between -- the

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1 difference between the two with and without
2 brakes, otherwise identical saws, was \$20 in
3 a saw that runs for \$110 to \$130. So, the
4 manufacturing cost would have certainly been
5 assumed to be less than \$20 divided by three
6 or four. Roughly \$7 or so.

7 But again, that has to do with
8 amortization of tooling, and how a company
9 costs their R & D efforts, whatever, but
10 what I'm pointing out here is I would
11 imagine that Partner could put a blade brake
12 on their saw for no more than 10 to \$20 more
13 than it cost them to make it now, and that's
14 just -- I'd say it's a rough, rough
15 estimate.

16 I don't know how they allocate
17 their overheads. I don't know what the
18 tooling costs are. I don't know how many
19 saws a year they produce and how much it
20 would have to be amortized over, but it's
21 certainly not a huge difference in my view,
22 would not be a huge difference.

23 Q. Can you tell me what Exhibit 7 is and maybe
24 you can find it in your own notes?

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(Document handed to witness.)

2 A. Those were some notes that I made based on
3 it looks like a reading of the Partner
4 manual and a reading of the accident report
5 just to get some information in a more
6 concise way for me to use in my
7 consideration and in my report. I just
8 plucked out some bits of information that I
9 thought I would probably want to have in
10 mind or would have in mind as I wrote my
11 report.

12 Q. When was Exhibit 7 prepared?

13 A. I don't know when it was prepared, but it
14 would have been before my report was.

15 Q. Early?

16 A. Yes.

17 Q. Exhibit No. 8?

(Document handed to witness.)

19 A. That had to do with the various tests that I
20 ran in stopping times, some of them on
21 little scraps of paper and what I did was
22 organized them and put them on this piece of
23 paper.

24 6/21/05 talks about the K2300 and
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1 my testing of the coast time down, that was
2 done on 6/21/05 when I measure the coastdown
3 time. Then I have three other dates, 9/13,
4 9/25 and 9/22 of 2005 when I had
5 opportunities to examine some other saws and
6 I wrote down the coasting down times with
7 and without braking on those saws.
8 Q. In your examination of other saws in
9 connection with this case did you ever look
10 at any portable power cutters comparable to
11 the one that Mr. Watson was using?
12 A. As I said before, I think every one of these
13 is comparable, in that it uses a universal
14 motor and it drives a blade. I don't see
15 that the fact that it has or hasn't got a
16 lower guard or that it's held one way or
17 another way or it uses an abrasive blade
18 versus a steel blade as being of any
19 significance in looking at the braking.
20 Q. Let me see if I can get a yes or no answer
21 to my question. Did you look at -- you
22 understand what a power cutter is?
23 A. I think what I understand a power cutter to
24 be is a saw similar to this one that does

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1 not have a retractable lower guard that is
2 used in abrasive cutting rather than cutting
3 wood.
4 Q. Taking that definition of a power cutter,
5 did you look at any other power cutters in
6 connection with your work on this case?
7 A. No.
8 Q. Would you identify Exhibit 9, please?
9 (Document handed to witness.)
10 A. That was done, if I could find my note.
11 Q. I'm going to ask you the date.
12 A. I don't know what the date is. It says up
13 there. It was my notes to myself based on
14 my own climbing up and down a ladder and
15 checking the time it took me to go through
16 the motions that Mr. Watson had described,
17 and I'll look for that.
18 Q. Can you pull out the original?
19 A. I can certainly try.
20 (Discussion off the record.)
21 A. It was 9/23/05.
22 Q. The date of Exhibit 9, right?
23 A. Yes.
24 Q. So, you did that -- this is the accident

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1 reconstruction climb down test where you
2 were timing how long it took to climb down
3 the ladder from the fifth or sixth rung
4 where Mr. Watson said he was?
5 A. Yes.
6 Q. As you testified earlier, you got about nine
7 seconds?
8 A. Yes.
9 Q. That was done before your report obviously?
10 A. Yes. That's Exhibit 9?
11 Q. Yes.
12 MR. BARRY: Mark that.
13 (Exhibit No. 13 ANSI B7.5-1983
14 marked for identification.)
15 (Document handed to witness.)
16 Q. This is Exhibit 13. Was that sent to you by
17 Mr. Tobin?
18 A. Yes.
19 Q. And did you find that of any relevance to
20 any of your opinions in this case?
21 A. No.
22 Q. That takes care of that. That makes it
23 easy. Do I understand correctly that the
24 first time you reached an opinion that there

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1 might have been a problem with the interlock
2 on the saw that Mr. Watson was using was
3 after you received the videos about two
4 weeks ago, and particularly the Swedish
5 video?
6 A. Yes.
7 Q. Did you think at all one way or the other
8 about the design of the interlock before
9 that point in time?
10 A. Before that period of time I operated the
11 interlock and it looked to me at the time
12 that it would have been difficult to
13 impossible to accidentally actuate the
14 trigger, and especially in the way
15 Mr. Watson had described what happened, I
16 had envisioned the saw hanging down and as
17 it hangs down why it pulls away from your
18 hand. You come away from the interlock.
19 And frankly, the learning process
20 and things gel slowly and when I saw the
21 video and this gentleman who first he was
22 tossing the saw, passing it from one hand to
23 the other actuating it and then he held it
24 hanging down and actuated it, and I said oh,

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1 my goodness, that's possible. I didn't
2 think it was possible.

3 I tried it. I found it very
4 difficult to do, almost impossible with my
5 bare hand, and I put a work glove on and I
6 found then it became possible to do it with
7 a saw hanging down. And then I had realized
8 with someone that handled this saw all the
9 time, he probably, it probably became second
10 nature to him to actuate it, and it may have
11 been instinctively in grasping the saw that
12 he did it or then in passing it from one
13 hand to the other the weight of the saw
14 caused the interlock button to be depressed.
15 And at that point I realized that this
16 interlock button is not in the right place
17 for safety.

18 Q. So, it wasn't that you didn't think about
19 the issue before?

20 A. It's hard to say. I can't say that I sat
21 down and wrote everything out and said what
22 do I think about and what don't I think
23 about. I looked at it. I saw it. I
24 recognized it was an interlock. It didn't

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1 -- it simply didn't occur to me that it
2 could be inadvertently actuated.

3 Q. Have you ever designed an interlock or
4 trigger lock for a power saw?

5 A. No.

6 Q. You've never done a design drawing or
7 developed a prototype for a trigger lock for
8 a power saw, have you?

9 A. No.

10 Q. And therefore, you haven't tested any
11 alternate design trigger lock or interlock
12 for a power saw, have you?

13 A. Other than for the purposes of this
14 deposition, I've done some mental design, of
15 course, saying what would I do, what do I
16 think would be a better interlock, a safer
17 interlock, and I don't need to actually put
18 pen to paper to do that. And I think there
19 are alternative ways of doing it that would
20 have prevented inadvertent operation.

21 Q. What alternative ways are there of doing it
22 that would have prevented an inadvertent
23 operation?

24 A. I am going to have to preface this by saying

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1 I haven't been hired to redesign the saw,
2 and in engineering designs you try an
3 approach. You experiment with it and you
4 test it on people. You see whether it works
5 or not. Then you redesign it and you refine
6 it, and what we're doing here is artificial
7 in the sense that all I'm going to be able
8 to give you is some two or three approaches
9 to what I would take, and then after working
10 with them, trying some prototypes, testing
11 them on people, they would either be
12 modified or discarded or what.

13 But number one, this is a heavy saw
14 and when you grasp it and hold it you need
15 to apply some force to the handle to be able
16 to control this weight. Therefore that
17 handle is not only to guide it when cutting.
18 It's also a handle that one uses to move the
19 saw around from one hand to the other and
20 carry it.

21 I wouldn't put the interlock
22 unprotected as it is in that handle, because
23 in holding the weight of the saw, depending
24 upon how one holds it, if you tip the saw

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1 like this and the weight is on the
2 interlock. So, I number one, would move the
3 interlock out of the internal cavity of the
4 handle. I would probably start by putting
5 it up on top of the handle, so that it could
6 be reached by the thumb and I would have put
7 some barriers around the side of it. Maybe
8 it's a slide switch, a slide push switch, so
9 that one has to kind of awkwardly reach up
10 front to get it and then put your hand back
11 into a comfortable position for holding the
12 trigger down.

13 No. 2, I might have put a barrier
14 around, similar to the interlock that's
15 there now, except not leaving it exposed as
16 it is, but having it in kind of a barrier
17 area, so one has to use the tip of one's
18 finger to actuate it, and it would have to
19 be done in such a way that if you bumped
20 into it you would be bumping into the
21 barrier rather than just the point of the
22 trigger.

23 And the third alternative would be
24 something that required a simultaneous press

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1 A. Essentially all of it. I mean other than
 2 investments and things like that.
 3 Q. Earned income?
 4 A. Earned income.
 5 MR. BARRY: I think that's all I
 6 have.
 7 MR. TOBIN: I have got to ask a
 8 couple.
 9 CROSS-EXAMINATION
 10 BY MR. TOBIN:
 11 Q. I have a few questions for you just for
 12 clarification. A little bit earlier you
 13 talked about different types of interlock
 14 that could be incorporated into this saw.
 15 Do you recall that?
 16 A. Yes.
 17 Q. The different types of interlocks you
 18 described, are they used on power tools and
 19 devices in the current market?
 20 A. There are many interlocks used on power
 21 tools in today's market.
 22 Q. You talked about interlocks that are
 23 recessed or guarded?
 24 A. Yes.

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1 Q. Are there products on the market today that
 2 use such interlocks?
 3 A. I've seen them. I can't specifically pull
 4 one out right now to describe to you.
 5 Q. But it's well accepted in the industry that
 6 they're used?
 7 MR. BARRY: Objection to form.
 8 A. I believe so, yes.
 9 Q. Mr. Wilder, can you conclude to a reasonable
 10 degree of engineering certainty that the
 11 presence of a blade brake and an effective
 12 interlock would have prevented Mr. Watson's
 13 injury?
 14 A. Would have prevented or mitigated it if both
 15 of those features were part of his saw.
 16 Q. Can you explain that, please?
 17 A. Well, I believe since we don't know or I
 18 don't know precisely what happened, how much
 19 of his injury was caused by coasting versus
 20 how much of it might have been caused by a
 21 powered on blade, since we don't know -- and
 22 how much it might have been caused by a
 23 coasting blade, the presence of both of
 24 those safety devices, a blade brake and an

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1 interlock in my opinion would have either
 2 prevented or mitigated this injury.
 3 Q. Mr. Wilder, can you conclude to a reasonable
 4 degree of engineering certainty that
 5 Mr. Watson's injury likely took place when
 6 he was near the bottom of the ladder?
 7 A. Yes.
 8 Q. Can you explain that conclusion for me,
 9 please?
 10 A. Well, yes. He climbed down the ladder
 11 several steps, and if he had been injured
 12 halfway up the ladder I doubt very much
 13 whether he would have been able to
 14 successfully negotiate the rest of the
 15 ladder, and he certainly wouldn't have
 16 testified that when and as he got to the
 17 bottom the injury occurred. He would have
 18 said as I was going down the ladder or
 19 something like that, but he specifically
 20 testified that his foot was either on the
 21 ground or just about on the ground and
 22 that's when he felt the injury, became aware
 23 of the injury.
 24 Q. A little bit earlier we talked about

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1 warnings. Is there a warning on the device
 2 itself regarding the danger of a coasting
 3 blade?
 4 A. No.
 5 Q. Should there be a warning on the device
 6 itself?
 7 A. Well, again, my opinion is that warnings
 8 were a second line of defense. First line
 9 of defense is to design a machine which is
 10 safe in and of itself as far as it can be
 11 done. A warning might or might not have
 12 been helpful. I can't tell you that.
 13 Q. Is there any kind of a warning on the device
 14 regarding inadvertent activation?
 15 A. Not that I saw.
 16 Q. Finally, is there a warning on the device or
 17 even in the owner's manual regarding whether
 18 this particular device should be used while
 19 climbing a ladder?
 20 A. I would have to look through that. I don't
 21 believe it says anything about that in
 22 there, but I would have to look through the
 23 manual again. In any event, people in the
 24 real world have to use ladders to sometimes

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